

LOW INCOME HOUSING TAX CREDIT

PROGRAM COMPLIANCE MANUAL



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TABLE OF CONTENTS

I. PREFACE.....	4
II. INTRODUCTION.....	5
III. RESPONSIBILITIES	6
A. Montana Board of Housing.....	6
B. The Owner	6
IV. TRAINING.....	7
V. RECORDS RETENTION.....	8
A. Individual Buildings.....	8
B. Overall Requirements.....	9
VI. NOTICE TO OWNER.....	9
VII. ANNUAL COMPLIANCE SUBMISSIONS.....	9
VIII. COMPLIANCE TERM (COMPLIANCE PERIOD)	9
IX. TENANT INCOME CERTIFICATIONS	10
X. RENT RESTRICTIONS	10
A. Overall Restrictions	10
B. Additional Fees	11
XI. NUMBER OF PERSONS PER UNIT.....	11
XII. QUALIFICATIONS OF APPLICANTS	12
A. The Application	12
B. Leasing to Students	13
C. Changes in Household Composition.....	14
D. General Income Verification Requirements	14
E. Effective Term of Verification.....	15
F. Acceptable Forms of Verification.....	15
G. Unemployed Applicants.....	17
XIII. ANNUAL INCOME	18
A. Annual Income Inclusions	18
B. Annual Income Exclusions	18
C. Asset Income.....	18
XIV. OWNER’S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE.....	18
XV. SITE VISITS.....	18
XVI. NONCOMPLIANCE & LIABILITY.....	19
XVII. SUBMISSION DEADLINES	19
XVIII. FEES	19

REQUIRED FORMS

OWNER'S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE	Exhibit A
TENANT INCOME CERTIFICATION	Exhibit B
DOCUMENT VIEWED OR TELEPHONE INFORMATION RECEIVED	Exhibit C
EMPLOYMENT VERIFICATION	Exhibit D
SOCIAL SECURITY VERIFICATION	Exhibit E
RAILROAD RETIREMENT VERIFICATION	Exhibit F
UNEMPLOYMENT BENEFITS VERIFICATION	Exhibit G
PENSION OR WORKER'S COMPENSATION VERIFICATION	Exhibit H
VETERAN'S ADMINISTRATION VERIFICATION	Exhibit I
MILITARY PAY VERIFICATION	Exhibit J
CHILD SUPPORT and/or ALIMONY VERIFICATION (by former spouse)	Exhibit K
PUBLIC ASSISTANCE VERIFICATION	Exhibit L
CERTIFICATION OF ZERO INCOME	Exhibit M
UNIT-BY-UNIT HISTORY	Exhibit N
YEAR END UNIT-BY-UNIT LISTING	Exhibit O
MBOH INFORMATION UPDATE	Exhibit P
QUESTIONNAIRE	Exhibit Q
OPERATING SURVEY	Exhibit R
STUDENT VERIFICATION	Exhibit S
UNDER \$5,000 ASSET VERIFICATION	Exhibit T
ASSET VERIFICATION	Exhibit U

No substituting of forms will be allowed without prior MBOH approval.

I. PREFACE

This manual is a training and reference guide for the administration of the Low-Income Housing Tax Credit (LIHTC) Program. It is intended to answer questions regarding the procedures, rules, and regulations that govern the LIHTC projects. The manual should be used in conjunction with, and as a supplement to, Section 42 of the Internal Revenue Code (IRC). If a determination is made that any provision of this manual is in conflict with Section 42 of the Internal Revenue Code, the Internal Revenue Code will govern.

The laws and regulations governing the Low Income Housing Tax Credit (LIHTC) Program as well as the interpretation of these laws can and do change. Owners and Managers should keep abreast of all changes in the Internal Revenue Code and the Code of Federal Regulations that may affect their properties. This may require consulting qualified legal and tax professionals for advice.

Compliance monitoring by Montana Board of Housing (MBOH) will be administered through the Multifamily Program. The MBOH contacts for the LIHTC compliance monitoring are Mary Bair (406-841-2852), Penny Cope (406-841-2848), or Justin Schedel (406-841-2812).

II. INTRODUCTION

The Montana Board of Housing's purpose is to provide decent, safe, sanitary and affordable housing for lower income persons and families in the State of Montana. Congress established the Low Income Housing Tax Credit program with the Tax Reform Act of 1986. Section 252 of the Act and Section 42 of the Internal Revenue Code (IRC) govern the Low Income Housing Tax Credit (LIHTC) Program, which began in 1987 and received permanent authorization with the Omnibus Budget Reconciliation act of 1993. The Montana Board of Housing (MBOH), which is the allocating agency for the State of Montana, implemented and began administering its Low Income Housing Tax Credit program in 1987.

Under Section 42m(m)(1)(B)(iii) of the IRC an allocating agency must have a procedure for monitoring compliance with the provisions of the Code and notifying the Internal Revenue Service (IRS) of any noncompliance of which MBOH becomes aware. The monitoring requirements became effective January 1, 1992, and were amended on January 14, 2000, and apply to all LIHTC projects, even if they received an allocation prior to 1992.

III. RESPONSIBILITIES

A. Montana Board of Housing

MBOH allocates tax credits through the LIHTC Program within the State of Montana based on the guidelines outlined in the annual Qualified Allocation Plan. Once a final allocation is awarded to a project, the Code requires MBOH to monitor compliance by reviewing certain records kept by the owners of low-income housing projects.

The code requires that MBOH conduct on-site inspections of all buildings in a project by the end of the calendar year following the year the last building in the project is placed in service and review the low income certification, the documentation supporting such certification and the rent record for each low income tenant.

In addition, at least once every three (3) years MBOH must conduct on site inspections of all buildings in the project, and at least 20 percent of the units (which will be randomly selected by MBOH), review the low-income certification, the documentation supporting such certification, and the rent record.

MBOH is to notify the owner of a low-income housing project in writing as soon as possible if MBOH discovers on audit, inspection, review, or in some other manner that the project is not in compliance with the code.

The owner has an opportunity to correct noncompliance within 90 days from the date of the notice to the owner.

MBOH is required to notify the IRS of an owner's noncompliance no later than 45 days after the end of the allowable time for correction, whether or not the noncompliance has been corrected. MBOH will notify the IRS by filing Form 8823 explaining the nature of the noncompliance and indicating whether the owner has corrected the noncompliance.

B. Owner

Each owner has chosen to utilize the LIHTC Program ("the Program") to take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met.

Prior to issuance of 8609s (final tax credit allocation), the owner and accountant must certify as to the total project costs and that all requirements of the Program have been met.

The owner must provide a copy of the limited partnership agreement before issuance of 8609s.

Any violation of the requirements of the Program could result in the loss of tax credits to the owner.

The owner is responsible for compliance with the Code (Section 42). Any and all financial consequences to the owner as a result of noncompliance, whether identified by MBOH or by the IRS, will be the sole responsibility of the owner.

The owner is responsible for insuring that the project is properly administered. The owner must make certain that the on-site management team complies with all appropriate rules, regulations and policies that govern the project.

The owner must notify MBOH immediately of any change in ownership, property management company, or site management personnel.

The MBOH will require a signed statement of Owner Certification (Exhibit A) from the owner on an annual basis. This statement must be filed with the MBOH every year during the compliance period, and if applicable, during the extended use agreement. Certifications are contained in Exhibit B of the Restrictive Covenants for any projects with Executed and filed Restrictive Covenants. The Final Regulations published in September 1992, added several items to the certification requirements. Owners must file annual certifications on the form provided by MBOH. This form may not be substituted. This form must be signed by the owner and notarized.

All project owners must submit operating income and cost information for the projects latest fiscal period. This information will be used to maintain a database of all tax credit projects in the state.

All project owners must submit a copy of the project's first year 8609s that will be filed with the IRS. The copies (with the bottom ½ completed) must be submitted to MBOH within 6 months of issuance or before the 8609s are used on the first year's tax returns, whichever is earliest.

The owner must supply the management company and the on site management copies of the Declaration of Restrictive Covenants and any other information needed to meet the compliance restrictions for the property.

IV. TRAINING

Project managers (those completing and approving tenant income certification paperwork), must be trained and certified by a competent and recognized "Tax Credit training professional entity." Management company personnel should all be certified. Certifications must be kept current.

Project managers must attend a qualified training at least bi-annually. Those who have not attended training in the last two years or newly hired managers must attend the next available qualified training. Managers may attend any qualified training anywhere, however, you must attend training as soon as the next qualified training is available in Montana.

The manager of a new LIHTC project should be trained before placed-in-service date or must attend the next available training in Montana.

Copies of certificates of attendance or certification must be sent to MBOH as they are received.

V. RECORDS RETENTION

A. Individual Buildings

Federal regulations require the owner of a low-income housing project receiving tax credits to retain the following information for each qualified low income building in the project. The information must show for each year in the compliance period:

1. The total number of residential rental units in a building (including the number of bedrooms and the size in square feet of each residential rental unit).
2. The percentage of residential rental units in the building that are low-income units.
3. The rent charged on each residential rental unit in the building (including any applicable utility allowances).
4. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented. If a unit is left vacant, or in a mixed use project is rented to a non-qualifying tenant, the owner must maintain documentation showing a diligent attempt was made to rent the unit to a qualifying tenant.
5. The annual income certification of each low-income tenant (by unit), including annual certifications for each continuous tenant.
6. Documentation to support each low-income tenant's income certification. This may include a copy of the tenant's federal income tax return, Forms W-2, or verification of income from third parties such as employers or state agencies paying unemployment compensation. Tenant income is calculated in a manner consistent with determination of income under HUD manual 4350.3.

7. The eligible basis and qualified basis of the building at the end of the first year of the credit period.
8. The character and use of any non-residential portion of the building included in the eligible basis of the building, if applicable.

B. Overall Requirements

Owners should also retain records relating to the amount of credit claimed for the Low Income Housing Tax Credit, including the Form 8609 and Schedule A of Form 8609.

Under the record retention provision of the IRS compliance regulations, the owner is required to retain the above mentioned records for at least 6 years after the due date for filing the federal income tax return for that year. Records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date for filing the federal income tax return for the last year of the compliance period.

VI. NOTICE TO OWNER

Under the notification-of-noncompliance provisions, the MBOH must provide prompt written notice to the owner if MBOH does not receive the certification(s) described in this document, or is not permitted to inspect the tenant income supporting documentation, rent records, or the project. In addition, the MBOH must provide prompt written notice to the owner if MBOH discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42.

VII. ANNUAL COMPLIANCE SUBMISSIONS

MBOH will require owners/projects to provide certain information on an annual basis. The request for this information will be sent out to the owners/projects in November of each year and must be received by MBOH no later than the 25th of January of the following year. This compliance package must be supplied to MBOH every year during the compliance period, and if applicable, during the extended use agreement. In addition, all project owners must submit operating income and cost information for the projects' latest fiscal period. This information will be used to maintain a database of all tax credit projects in the state.

VIII. COMPLIANCE TERM (COMPLIANCE PERIOD)

The owner must comply with the unit set aside percentage represented by the owner in the Declaration of Restrictive Covenants for Low Income Housing Tax Credits. Owners must continue the set aside for the entire fifteen-year compliance period. Owners who received credits after 1989 must continue the set aside for the fifteen year compliance period, plus the 15 year extended use period. The owner must maintain the set aside for any additional period covered by the Declaration of Restrictive Covenants.

IX. TENANT INCOME CERTIFICATIONS

A Tenant Income Certification (Exhibit B) must be completed by the owner/manager and tenant at least annually, using the tenant signature date as the anniversary date, and filed with the MBOH, in addition to the Owners Annual Certification.

1. For Rural Development projects, the MBOH will accept Form RD 1944-8-Tenant Certification. Tax credit income is based on the Annual Income (section 17.f.) rather than Adjusted Income portion of the form.
2. For all other projects, the owners must complete the MBOH Tenant Income Certification and file it with the MBOH on an annual basis for each tenant.

In either case MBOH will not require owners to send in documentation supporting the numbers represented on the form with the Tenant Certifications. MBOH will review supporting documentation as part of the On-Site Review process

A tax credit unit must fall under the provisions of maximum monthly rent restrictions to meet compliance requirements. Restrictions to the maximum monthly rents by unit size are available on the “Maximum Income and Rent Table” provided by the MBOH. Maximum monthly rents, including the utility allowance, cannot be exceeded.

X. RENT RESTRICTIONS

A. Overall Restrictions

Units set aside as low-income units must be rent restricted as required by Section 42(g)(2) of the Code. A unit is rent restricted if the “gross rent” does not exceed 30% of the applicable income limitation. MBOH will release Income and Rent Tables on an annual basis after receiving current median incomes from HUD.

The amount of rent that can be charged by a project is based on the number of bedrooms in the unit. For example, the maximum rent for an efficiency apartment with no separate bedroom would be based on the income limit for a one-person household regardless of the actual number of persons occupying the unit. Maximum rent is otherwise based on the qualifying income limits for 1.5 persons for each bedroom in the unit. For one-bedroom units, the maximum rent is determined by using the average

of the one and two person income limits. The maximum gross rent for a three-bedroom unit is determined by using the average of the four and five-person income limits.

“Gross rent” is defined by the Code as the unit rent plus any utility allowance determined by the Secretary to cover any utilities a resident is required to pay other than telephone. Gross rent does not include any rental assistance payments under the Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program, or any fees for supportive services (any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent) which are paid to the owner of the unit by any governmental program of assistance. The gross rent for developments receiving rental assistance under Section 515 does not include any rental payment to the owner for a unit to the extent such owner pays an equivalent to Rural Development under Section 515 of the Housing Act of 1949.

The gross rent cannot exceed the applicable maximum rent as listed on the current applicable Income and Rent Table that is based on HUD-published income limits and provided by MBOH.

The owner is responsible for obtaining updated utility allowances at least annually from the local Public Housing Authority, HUD, or Rural Development office and for implementing any applicable changes. Federal regulations require new utility allowances to be used to compute rents within 90 days after the change in allowances. MBOH will provide the updated utility allowances as they are published for projects that utilize the PHA allowances. MBOH provides these as a courtesy but it is the responsibility of each project to ensure that they are using the most current applicable utility allowance that is available for their property.

B. Additional Fees

There are some instances where additional fees for services or facilities may be charged in addition to gross rent, but only if the following conditions are met:

1. The cost of the facilities are not included in eligible basis
2. The facilities or services are truly optional
3. A reasonable alternative is provided

For example, if an owner offers washers and dryers in the apartments for an additional fee, the cost of the washers and dryers must not be included in eligible basis and an alternative such as laundry facilities at the project must be provided to the residents.

XI. NUMBER OF PERSONS PER UNIT

There are generally no regulations governing the number of persons allowed to occupy a unit based on size. It is important, though, to be consistent when accepting or rejecting applications. It is recommended that the owner check with the local governmental

jurisdiction (i.e. city or county) to determine if any local regulations apply. Based on that response the owner should then determine the minimum and maximum number of people that will be allowed to occupy each size unit and put that formula in writing as part of the management plan. This has become a hot-button topic as far as Fair Housing is concerned and needs to be carefully thought out and followed to minimize exposure to a Fair Housing related action.

XII. QUALIFICATION OF APPLICANTS

Applicants for low income, rent-restricted units should be advised early in their initial visit to the project that there are maximum income limits that apply to these units. Management should explain to the tenants that the anticipated income of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certification form prior to occupancy and that they will be required to have their financial status reviewed on an annual basis.

A. The Application

A fully completed application is critical to an accurate determination of eligibility. The information furnished on the application should be used as a tool to determine *all* sources of income and assets. Management needs to be certain the application solicits sufficient information to make an accurate determination of the household's total income and assets using HUD 4350.3 standards. It is recommended that roommates complete separate applications.

After the household completes the application, the owner must verify all income and assets. The anticipated earned income and assets of every prospective household member 18 or older must be verified. Unearned income, assets and asset income of all household members, including minors also must be verified. After all income and assets have been verified and eligibility for a low-income unit has been determined the owner or manager must then complete the Tenant Income Certification form (TIC). The TIC must be signed by the owner/manager and any applicant over the age of 18. The TIC along with the lease must be completed *prior* to move-in. MBOH does not recognize effective dates; the only date MBOH is concerned with is the actual date that the tenant signed the TIC. All occupants of a low-income unit must be certified and under lease.

Upon each anniversary date of the tenant's original certification a new TIC must be completed and all resident income re-verified. Recertification must be completed on or before the anniversary date of the most recent TIC tenant signature date.

The re-certification income calculation helps of keep track of the income level of a household. A unit does not lose its status as a low-income unit solely because of an increase in the household's income. Once a household qualifies as a low-income it continues to qualify as such until the tenant's income exceeds 140% of the applicable income limit. Even then, the household remains low-income as long as the owner continues to fill vacancies in comparable or smaller units with tenants who qualify as

low-income tenants and the units continue to be rent restricted. The unit ceases to qualify as a low-income unit if any vacancy in a comparable or smaller unit is filled with an income-ineligible tenant.

B. Leasing to Students

A household totally made up of full time students is not considered LIHTC eligible. Use the Student Status Certification form to identify full time students. Student status should be verified (Exhibit S) if there is any question of the applicant's eligibility. The issue with students is only a concern when everyone in the household is a full-time student. If an income eligible household is composed entirely of full time students, the household will not be treated as tax credit eligible unless it meets one of the exceptions. The four exceptions are as follow:

1. At least one member of the household receives assistance under Title IV of the Social Security Act (i.e. TANF).
2. At least one member of the household is currently enrolled in a job-training program assisted under the Job Training Partnership Act (JTPA) or a similar federal, state, or local program.
3. The household consists of a single parent(s) with child (ren) and both the parent and child (ren) are not dependents of a third party. Owners or managers should obtain a copy of any divorce decree showing custody and dependent status and a signed copy of the current tax return verifying the dependent status.
4. A member of the household is married and files a joint tax return. Owners or managers should obtain copies of the current joint tax return for their files. (A question about the interpretation of this student exception as outlined by the Internal Revenue Code has arisen. Some states read the rule as meaning all members of the household must be married to take advantage of this exception and some states maintain that one member satisfies the requirement. MBOH has interpreted this exception to read that only one member of the household must be married. Owners should be aware that this interpretation may or may not be shared by the IRS so owners should seek their own legal counsel on this issue.)

There is another important consideration when dealing with the student issue. The IRS has made it clear that the full-time student issue is to be monitored on a tax-year basis. If at any time during tenancy the household becomes comprised of all full-time students that don't meet one of the four exceptions then the household is no longer eligible and the unit loses its status as a tax credit unit. Owners may wish to protect themselves and the status of their tax credit units by including language in their leases that states full-time student status by all household members is a lease violation.

C. Changes in Household Composition

All household members must be certified and named on the lease. At time of lease-up of the unit the manager/owner needs to do everything possible to ensure everyone who intends to live in the unit is qualified and named on the lease. It is permissible for the management to allow additional person(s) to move into the unit after initial move-in but care should be taken to make sure that the additional tenants were not left out of the initial move-in because of potential qualification issues. MBOH strongly suggests that managers/owners have a policy in place regarding additions to housing credit unit households that take place within six (6) months of the initial occupancy of the unit. IRS rules require LIHTC property owners to recertify tenant income eligibility at least annually but do not mandate interim recertification.

The lease must include the legal name(s) of the parties to the agreement and all other occupants, a description of the unit to be rented, the date the lease became effective, the term of the lease, the rental amount, the use of the premises, the rights and obligation of the parties and signature dates. The initial lease term must be a minimum of six (6) months on all tax credit units, except for single room occupancy units.

The lease should also inform the tenant that fraudulent statements are grounds for eviction.

If a household member vacates the unit, the unit will remain in the category as originally certified. The tenant file should be documented accordingly when any household member vacates the unit or the household composition changes in any way.

Any previously qualified household may change units in the same building without having to re-qualify. However, if a tenant wishes to move to a new unit in a different building then the tenant will need to be treated as a new move-in and complete the entire qualification process.

D. General Income Verification Requirements

All regular income sources, including asset income must always be verified. Written verification of income directly from the source (3rd party verification) must always be attempted.

1. Income verification requests must be sent directly to and from the source, not through the tenant.
2. When written verification is not possible prior to move-in,(documentation should be in the file of attempts) direct contact with the source will be acceptable to MBOH but must be followed up by written documentation. The conversation

should be documented in the applicant's file to include all the information that would be included in a written verification. The name and title of the contact, the name of the management representative accepting the information and the date must be included. The Document Viewed or Telephone Information Received (Exhibit C) may be used for documentation of a direct contact.

3. Management should give the applicant the opportunity to explain any significant difference between the amounts reported on the application and amounts reported on third-party verification in order to determine actual income. The explanation should be documented in the tenant file.

E. Effective Term of Verification

Written verifications are valid for 90 days. After 90 days, the information may be verbally updated from the original source for an additional 30 days. After this time a new written verification must be obtained.

F. Acceptable Forms of Verification

All attempts at obtaining verification should be documented (i.e. copies of third party verification letters sent to the source). Acceptable forms of verification for specific types of income situations include:

1. Employment Income

1st Choice: Employment Verification (Exhibit D) completed by the employer or statement from employer on company letterhead

2nd Choice: A series of consecutive check stubs or earnings statements showing the employee's gross income and hours per pay period and frequency of income (try to cover 2 or 3 months)

2. Self-Employment Income

1st Choice: federal tax return (Schedule C or F) or accountant's statement of net income

2nd Choice: current financial statements of the business and a certification from the applicant giving the anticipated income for the 12 months following certification (this method to be used only for the first year of self-employment)

3. Social Security

Social Security Verification (Exhibit E) completed by the agency providing the benefits or the most recent award of benefits notification letter prepared and signed by the authorizing agency.

4. Railroad Retirement

Railroad Retirement Verification (Exhibit F) completed by the firm providing the benefits or most recent award or benefit notification letter prepared and signed by the authorizing firm

5. Unemployment Compensation

Unemployment Benefits Verification (Exhibit G) completed by the unemployment compensation agency or records from the unemployment office stating payment dates and amounts

6. Workers Compensation or other Pension

Pension or Workers Comp Verification (Exhibit H) completed by the agency providing the benefits or most recent award or benefit notification letter prepared and signed by the authorizing agency

7. Veteran's Benefits

Veteran's Verification (Exhibit I) completed by the agency providing the benefits or most recent award or benefit notification letter prepared and signed by the authorizing agency

8. Military Pay

1st Choice: Military Pay Verification (Exhibit J) completed by the employer or statement from employer on business letterhead

2nd Choice: check stubs or earnings statements showing the employee's gross pay per pay period and frequency of pay

9. Child Support and/or Alimony

1st Choice: Copy of separation or divorce decree stating the amount and type of support payment schedule and a copy of the latest support check

2nd Choice: Copy of ledger statement from Child Support Enforcement Division (CSED) detailing payment history of court ordered support

3rd Choice: Child Support and/or Alimony Verification (Exhibit K) completed by spouse

10. Welfare (TANF)

Public Assistance Verification (Exhibit L) completed by the agency providing the benefits or copy of TANF budget signed and dated by caseworker

11. Recurring Contributions and Gifts

1st Choice: certification signed by the person providing the assistance giving the purpose, dates and value of the gifts, or a verification letter from the bank, attorney, or a trustee administering the contribution

2nd Choice: certification from the applicant giving the purpose, dates and value of the gifts

G. Unemployed Applicants

The income of unemployed household members with regular income from any source such as Social Security, pension, recurring gifts, etc., must be verified as covered previously.

If a household member is currently unemployed and claiming zero (0) income, the tenant must provide evidence of anticipated income for the certification year by completing a Certification of Zero Income (Exhibit M). It should be noted, however, that every effort needs to be made to identify and verify *any* source of income, either monetary or non-monetary, for prospective zero income tenants. It is becoming widely held that there are very few, if any, actual zero income tenants as it is virtually impossible to survive day-to-day without some source of income.

XIII. ANNUAL INCOME

A. Annual Income Inclusions

Annual Income is the amount of income that is used to determine a family's eligibility. Annual income is defines as follows:

1. All amounts monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even is the family member is temporarily absent), or any other family member.
2. All amounts anticipated to be received from a source outside the family during the 12-month period following admission or annual recertification effective date.

B. Annual Income Exclusions

Annual Income includes all amounts that are not specifically excluded by regulation. Exhibit 5-1 of 4350.3, Income Inclusions and Exclusions, provides the complete list of income inclusions and exclusions published in the regulations and Federal Register notices. (Chapter 5 of 4350.3 is attached)
Oct. 20, 0410/20/04

C. Asset Income

C. Annual Income includes amounts derived (during the 12-month period) from assets (Exhibits T & U) to which any member of the family has access.

XIV. OWNER'S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The Owner's Certificate of Continuing Program Compliance (Exhibit A) must be completed and submitted to MBOH on an annual basis, along with the rest of the annual compliance documentation (Exhibits N-R). Non-receipt of any reports by the due date will automatically trigger the filing of a notice of noncompliance to the IRS, as required by the Code.

XV. SITE VISITS

MBOH is required by IRS statute to conduct on-site compliance reviews of a minimum of 20% of the units in every property at least once every 3 years. The on-site reviews will include review of some tenant files and the corresponding units, along with an inspection of the overall general condition of the property. Properties that are scheduled for inspection will be given ample notice by MBOH to prepare and notify the tenants of the impending visit.

XVI. NONCOMPLIANCE& LIABILITY

If MBOH does not receive the required certifications when due or discovers on audit, inspection, review or in any other manner that the project is not in compliance with the Code, MBOH will notify the owner as soon as possible.

The owner will be given an opportunity to supply missing certifications or to remedy noncompliance within a specified correction period. At the sole discretion of MBOH, the correction period may be extended if extenuating circumstances exist.

MBOH is required to notify the IRS of an owner's failure to file the Annual Owner's Certification in a timely manner, or any noncompliance no later than 45 days from the expiration of the allowed correction period, regardless of whether or not the noncompliance or failure to certify has been corrected.

Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. MBOH's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's noncompliance.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relation to, the compliance monitoring of a low income housing tax credit project.

XVII. SUBMISSION DEADLINES

Owners must submit Owner Certification of Continuing Program Compliance (a separate certification must be submitted for each project having an allocation of tax credits) and Tenant Income Certifications on the prescribed forms prior to January 25th of each year. At the owners request to MBOH an earlier certification date may be set. However, once the certification date is set, certifications will be due at the same time each year. Federal regulations stipulate there must be no more than 12 months between certifications.

XVIII. FEES

An annual fee of \$25 per low-income unit (subject to change) will be payable to the MBOH when the owner submits annual certifications. The fee is to offset the costs of tax credit monitoring procedures.